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ALEXANDER L. STEVAS,
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NO. 80-1868

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

ROLAND BLANCHET----------Petitioner

versus

THE PEOPLE OF THE STATE
OF NEW YORK----------Respondent

BRIEF IN OPPOSITION

CHARLES J. WILCOX
DISTRICT ATTORNEY
RENSSELAER COUNTY
COUNTY COURT HOUSE
TROY, NEW YORK 12180
(518) 270-5250

OCTOBER , 1980

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New York Penal Law Section 155.25.

CASES

People v. Green, 35 N.Y. 2d 437 (1974).....

People v. Henderson, 41 N.Y. 2d 233 (1977).....

In Re Winship, 397 US 358, 90 S. Ct. 1068 (1970).....

OPINIONS BELOW

The opinion of the County Court for the County of Rensselaer, State of New York, affirming the underlying conviction of Roland C. Blanchet for Petit Larceny is included herein in Appendix A. The opinion of the New York State Court of Appeals denying a certificati on for leave to appeal the County Court decision appears in Volume 52 of New York Reports, Second Edition at Page 901.

JURISDICTION

The Jurisdiction of the Court is invoked under Title 28, United States Code, Section 1, 257, subdivision 3 which authorizes such a petition where the validity of a state statute is

questioned as being unconstitutional or in violation of the laws of the United States.

1. Was the case against Roland Blanchet proved beyond a reasonable doubt.

2. Was the $150.00 fine imposed excessive by law.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions here involved are:

a. New York Penal Law Section 155.25 which states that "(a) person is guilty of petit larceny when he steals property. Petit larceny is a class A misdemeanor."

b. New York Penal Law Section 80.05, subdivision 1 which authorizes a court to impose a fine of up

commission thereof." CPL Section 70.20.

STATEMENT OF THE CASE

The facts underlying the petition for certiorari are as follows:

On November 29, 1978, the petitioner herein was found guilty by the Hon. Edward Spain, Troy Police Court Judge after a non-jury trial of the crime of Petit Larceny in violation of Penal Law Section 155.25. The crime involved the theft by the petitioner of $7.50 worth of gasoline from a Gasland station which is located on Northern Drive in the City of Troy, County of Rensselaer and State of New York. The defendant waived his right to a jury trial of this case on the record.

to $1,000.00 for conviction of a defendant of a class A misdemeanor.

c. United States Constitution, Amendment VIII, which bars excessive fines and cruel and uncensual punishment.

d. United States Constitutional, Amendment XIV and New York Criminal Procedure Law Section 70.20 which both require that " conviction of an offense by verdict is valid unless based upon trial evidence which is legally sufficient and which establishes beyond a reasonable doubt every element of such offense and the defendant's

Ernest R. Anderson, III, the first witness for the prosecution testified under oath that he knew Roland Blanchet. This witness saw the petitioner herein take the pump nozzle from the gasoline pump, place it in the tank of his car and put gasoline in his car. This witness further testified that he spoke with the petitioner during this theft in progress and that the gasoline pumps were well lit and that the pump meter was moving. He testified that the pump that the petitioner used read $7.50 and that the petitioner left the station without paying (Pages 11, 12, 34 and 35 of record) and thereafter the defendant refused to pay.

The second witness for the prosecution, Richard Goyer, who was also an employee on duty, testified under oath that he saw the petitioner pump his own gasoline and then get into his car. (Page 39 of record).

Roland Blanchet called his wife as a witness for the defense. She testified on cross examination that she could not see what transpired (page 95 of record).

The petitioner testified at trial that he took no gasoline.

The trial court found the defendant guilty and sentenced him to pay a fine of $150.00 as punishment for his crime. A notice of appeal to the Rensselaer County Court was filed on December 19, 1978. The court affirmed the conviction.

The defendant then petitioned the New York Court of Appeals for leave to appeal further but this was denied on January 12, 1981.

SUMMARY OF ARGUMENTS

The trial court found beyond a reasonable doubt that the defendant was guilty of the crime charged. The sentence imposed by this court was within the discretionary limits as outlined in Penal Law Section 80.05, subdivision 1 which authorizes a fine of up to $1,000.00 for conviction of a class A misdemeanor.

ARGUMENT

In this case, the trial court heard evidence from four witnesses. The court

The court as the trier of fact may have looked to motives, demeanor and biases of these witnesses. A trier of fact is free to accept or reject all or part of the defense or prosecution's evidence. People v. Henderson, 41 NY 2d 233. The judge is an experienced attorney and police court magistrate who is familiar with the fact that at trial, each and every element essential to a crime, must be proved beyond a reasonable doubt. U.S. Constitution, Amendment XIV, CPL Section 70.20. In Re Winship, 35 N.Y. 2d 437 (1974). The court considered all the evidence and found beyond a reasonable doubt that the petitioner was guilty of petit larceny.

This is not a case where an act may occur without affirmative expression of

intent to be shown. There was evidence presented that the petitioner went to a gasoline station and pumped gasoline into his automobile and then refused to pay for these goods. The intent is implicit in the affirmative acts of the petitioner.

After the petitioner was found guilty of petit larceny, a class A misdemeanor, the court imposed a $150.00 fine as its sentence. The court would have been within its discretion to impose a fine of up to $1,000.00, Penal Law Section 155.25, 80.05(1). The court did not abuse its discretion by either its guilty verdict or its imposition of the $150.00 fine.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THE RESPONDENT HEREIN SUBMITS THAT A WRIT OF CERTIORARI SHOULD NOT BE GRANTED IN THIS CASE.

CHARLES J. WILCOX
DISTRICT ATTORNEY
RENSSELAER COUNTY
(STEPHEN A. PECHENIK,
ESQ., OF COUNSEL)
ATTORNEY FOR RESPONDENT
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TROY, NEW YORK 12180
(518) 270 - 5250

At a Trial Term of the County Court of the State of New York, held in and for the County of Rensselaer, at the Court House in the City of Troy, New York, on the 29th day of July, 1980.

PRESENT: HON. M. ANDREW DWYER, JR., County Court Judge

STATE OF NEW YORK
COUNTY COURT COUNTY OF RENSSELAER

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Respondent,

against

ROLAND C. BLANCHET,

Defendant-Appellant.

ORDER
Index No. 134445

The above-entitled case having come before this Court on appeal from the Police Court of the City of Troy, New York and after reading and examining the record on appeal, the briefs of the attorneys and after hearing the oral arguments on the 29th day of July, 1980 William J. Doyle, Jr., Special Prosecutor, appointed by this Court by order dated March 5, 1980 to represent the Respondent and Robert M. Cohen, Esq. for the defendant Appellant, it is

ORDERED, ADJUDGED AND DECREED, that the conviction of the defendant and fine of $150 is in all respects affirmed.

Dated: August 13 1980

S/M. Andrew Dwyer, Jr.
M. Andrew Dwyer, Jr.

APPENDIX "A"